

ORIGINAL

FILED

June 21 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

FILED

JUN 21 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Shaun R. Thompson
Disciplinary Counsel
P.O. Box 1099
Helena, MT 59624-1099
Tele.: (406) 442-1648

Office of Disciplinary Counsel

BEFORE THE COMMISSION ON PRACTICE OF THE
SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF MARVIN E. ALBACK,)
An Attorney at Law,) Supreme Court Cause No. PR 10-0266
Respondent.) ODC File No. 10-124
) **COMPLAINT**

For its complaint, the Office of Disciplinary Counsel for the State of Montana ("ODC"),
alleges:

1. Marvin E. Alback, hereinafter referred to as Respondent, was admitted to the
practice of law in the State of Montana in 1982, at which time he took the oath required for
admission, wherein he agreed to abide by the Rules of Professional Conduct, the Disciplinary
Rules adopted by the Supreme Court, and the highest standards of honesty, justice and morality,
including but not limited to, those outlined in parts 3 and 4 of Chapter 61, Title 37, Montana
Code Annotated.

2. Respondent was disbarred by the Montana Supreme Court by Order dated
February 4, 1988 after he was convicted of felony theft.

1 3. Respondent was reinstated to the practice of law in Montana by the Montana
2 Supreme Court by Order dated August 15, 2000.

3 4. Respondent resigned his membership in the State Bar of Montana on November
4 6, 2009.

5 5. The Montana Supreme Court has approved and adopted the Montana Rules of
6 Professional Conduct ("MRPC"), governing the ethical conduct of attorneys licensed to practice
7 in the State of Montana, which Rules were in effect at all pertinent times mentioned in this
8 Complaint.

9 6. By an Information filed in the United States District Court for the District of
10 Montana on February 5, 2010, Respondent was charged with Wire Fraud in violation of 18
11 U.S.C. § 1343 (Count I) and Bankruptcy Fraud in violation of 18 U.S.C. § 153 (Count II).

12 7. On February 23, 2010, pursuant to a plea agreement, Respondent pled guilty to
13 both counts of the Information.

14 8. On May 26, 2010, Respondent was sentenced to the custody of the United States
15 Bureau of Prisons for eighteen (18) months on Count 1 and eighteen (18) months on Count 2 to
16 run concurrent. Respondent was also sentenced to three (3) years of supervised release on Count
17 1 and three (3) years of supervised release on Count 2 to run concurrent and is required to pay
18 restitution.
19

20 9. The conduct for which Respondent was convicted occurred prior to his
21 resignation.

22 10. By Order filed June 15, 2010, the Montana Supreme Court, pursuant to Rule 23B,
23 RLDE (2002), determined that the criminal offenses of which Respondent has been convicted
24 affects the Respondent's ability to practice law, suspended Respondent pending disposition of
25

1 disciplinary proceedings and directed ODC to file a complaint against Respondent predicated
2 upon his criminal conviction.

3 11. Pursuant to Rule 8A(3), RLDE (2002), conduct which results in conviction of a
4 criminal offense is a ground for discipline.

5 12. Pursuant to Rule 8.4(b), MRPC, it is professional misconduct for a lawyer to
6 "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness
7 as a lawyer in other respects[.]"

8 13. Pursuant to Rule 8.4(c), MRPC, it is professional misconduct for a lawyer to
9 "engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]"

10 14. Pursuant to Rule 23C, RLDE (2002), the sole issue to be determined in the formal
11 disciplinary proceedings herein "shall be the extent of the final discipline to be imposed."
12

13 WHEREFORE, the Office of Disciplinary Counsel prays as follows:

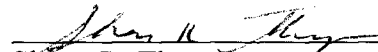
14 1. That a Citation be issued to the Respondent, to which shall be attached a copy of
15 the complaint, requiring Respondent, within twenty (20) days after service thereof, to file a
16 written answer to the complaint;

17 2. That a formal hearing be had on the allegations of this complaint before an
18 Adjudicatory Panel of the Commission on the sole issue of the extent of the final discipline to be
19 imposed upon the Respondent; provided, however, that the matter not be brought to hearing until
20 all appeals from the conviction are concluded unless the Respondent requests that the matter not
21 be deferred pursuant to Rule 23C, RLDE (2002);

22 3. That the Adjudicatory Panel of the Commission make a report of its findings and
23 recommendation after a formal hearing to the Montana Supreme Court as to the nature and
24 extent of appropriate discipline, and,
25

4. For such other and further relief is deemed necessary and proper.

DATED this 18th day of June, 2010.


Shaun R. Thompson
Disciplinary Counsel